

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

Pre-MUR 551

DATE SUBMITTED: 12/10/2012

DATE ACTIVATED: 1/14/2013

EXPIRATION OF SOL: 10/24/2017 (Earliest)
11/02/2017 (Latest)

SOURCE:

Sua Sponte Submission

RESPONDENT:

Strong Economy for Massachusetts, Inc. and
Ernesto DiGiambattista in his official capacity
as treasurer

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 434(g)
11 C.F.R. § 104.4(c)

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Strong Economy for Massachusetts, Inc., and Ernesto DiGiambattista in his official capacity as treasurer ("Strong Economy"), an Independent Expenditure Only Committee, provided a *sua sponte* submission regarding its failure to file timely 24-Hour Notices of Independent Expenditures for five independent expenditures totaling \$175,402.05. *See* Strong Economy *Sua Sponte* Submission (Dec. 10, 2012) ("Submission"). We pursued this matter through Fast-Track Resolution ("FTR") pursuant to the Commission's policy on *sua sponte* submissions. *See* 72 Fed. Reg. 16,695, 16,698 (Apr. 5, 2007). We now recommend that the

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Commission accept the attached signed conciliation agreement, which includes a \$9,000 civil penalty, and close the file.

II. FACTUAL AND LEGAL ANALYSIS

Pre-MUR 551 was initiated by the Submission, which Strong Economy thereafter supplemented. *See* Letter from Michael Bayes, Counsel to Strong Economy, to Susan Lebeaux, Office of General Counsel, FEC (Mar. 4, 2013) ("Supp. Submission"). According to the Submission and its attached Schedule Es, Strong Economy made five independent expenditures between October 22 and October 31, 2012, to the same vendor, Majority Strategies, for "[v]oter contact mail." Submission at 1, Attach. Three of the independent expenditures, totaling \$96,448.03, opposed candidate John Tierney and the other two independent expenditures, totaling \$78,954.02, supported candidate Richard Tisei, both candidates in the 2012 general election for Massachusetts's 6th Congressional District seat. *See id.*, Attach.

Under the Federal Election Campaign Act of 1971, as amended (the "Act"), a political committee that makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours before the date of an election, is required to file a report describing the expenditures within 24 hours. 2 U.S.C. § 434(g)(1); 11 C.F.R. § 104.4(c). These reports must be filed within 24 hours "following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 104.4(c). The committee must file additional reports within 24 hours after each time it makes independent expenditures aggregating an additional \$1,000. *Id.*

Strong Economy acknowledges that between October 22 and October 31, 2012, it

1 made five independent expenditures but failed to timely report them on 24-Hour Notices of
2 Independent Expenditures. Submission at 1; Supp. Submission at 1. Accordingly, Strong
3 Economy violated 2 U.S.C. § 434(g).

4 Strong Economy states that it discovered the reporting failures during the preparation
5 of its 2012 Post-General Report. Supp Submission at 2. It attributes the errors to a failure to
6 convey the details regarding the costs and distribution dates of the five mail pieces to the
7 person responsible for preparing its FEC reports. *Id.* at 1. Strong Economy asserts that this
8 failure was "an oversight, was not intentional, and was absolutely not an attempt to keep so-
9 called 'election sensitive' information from the public." *Id.* at 2. It subsequently disclosed
10 the five independent expenditures on December 5, 2012, almost a month after the election.
11 The next day, December 6, 2012, Strong Economy filed its 2012 Post-General Report
12 reflecting the same independent expenditures on Schedule Es. Strong Economy states that
13 going forward it is committed to including the person responsible for preparing its reports in
14 the discussions and correspondence leading up to the distribution of public communications to
15 ensure this person always has the information needed to file all required FEC notices and
16 reports. Supp. Submission at 2.

IV. RECOMMENDATIONS

- 1) Open a MUR;
- 2) Accept the attached conciliation agreement with Strong Economy for Massachusetts, Inc and Ernesto DiGiambattista in his official capacity as treasurer prior to a finding of reason to believe;
- 3) Approve the appropriate letter;
- 4) Close the file.

Anthony Herman
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Date

6-18-13


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